

T H E

Treaties vol 5,

PRETENSIONS

O F

Don Carlos

CONSIDERED:

With a View to the

Treaty of SEVILLE,

And the Nature of Feudal Tenures.

In a Letter to * * * * *

L O N D O N:

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MDCCXXX.

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T H E
P R E T E N S I O N S
O F
Don *CARLOS*, &c.

MY LORD,



HAVE waited, with Impatience, to hear the Arguments which might be offer'd against that Part of the Treaty of *Seville*, which relates to the Succession of *Don Carlos* of *Spain*. Those that I have heard, I have weigh'd with Attention; and it does not seem from any Reasoning or Point of History relating to this Subject, that I have the least Ground to alter the former Opinion which I sent to your Lord-

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ship: On the contrary, there are many Motives and Arguments to confirm me in my Notion of the Morality and Lawfulness of that Settlement. I see nothing in it inconsistent with Justice; whether it be that Justice by which Nations are obliged in their Stipulations with one another, or those particular Laws to which the Members of every City are subject, consider'd within themselves.

I cannot but say, that I expected that Controversies would start up on the Lawfulness of the Variation of the Ninth Article of the Treaty of *Seville*, from the Fifth Article of the Treaty of Quadruple Alliance: I foresaw that it would be urg'd, that the Energy of the Stipulation agreed on in the Treaty of Quadruple Alliance would be much weaken'd by the Change of Six Thousand *Swisses*, by whom the Fortresses of *Tuscany*, *Parma* and *Placentia* were to have been garrison'd, to secure the Succession of *Don Carlos*, according to the Treaty of Quadruple Alliance, into an equal Number of *Spaniards*. To which, tho' the Emperor should not consent, yet are these Troops to be transported, without Loss of Time, into *Italy*, in Violation (as is argued) of the Mutuality of the Covenant, agreed upon in the Treaty of Quadruple Alliance, between the Emperor and the contracting Parties.

My anticipating these Objections, by seeing them before-hand, did not proceed from any Appearance of Validity in the Argument itself, but from a Prospect of that kind of Opposition which it is a Question whether it ought not to be nurtur'd in a well govern'd City.

If this Alteration in the Treaty of *Seville* could be prov'd to be a proper Amendment of
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the Treaty of Quadruple Alliance, to which the Emperor could with no Appearance of Equity make any Objection, it will then necessarily appear, that the Variation is justifiable, and of absolute Necessity to clear up, and determine the Intention of the Treaty of Quadruple Alliance. But I shall proceed to evince the Propriety of the Amendment in the Manner following.

I think I may be bold to say, that, in this Point the Treaty of Quadruple Alliance stood in Need of an Amendment. There was an original Vice in the Part of the Treaty which relates to the Mutuality of the Conditions stipulated, (if not to foresee the Chimera's of the Imperial Ministers, in a subsequent Treaty be a Vice.) The Contract was not mutual, unless it were to be understood, that each Party was at Liberty to take proper Means to secure to themselves the mutual Advantages to be gain'd by it. So, that if Six Thousand *Spaniards* might be judged more proper for effecting the Intention of the Treaty of Succession, it was a necessary Amendment towards establishing the Mutuality of the Contract, that that Nation should furnish the Troops, of whose Obedience towards effecting the Succession, there could be the least Doubt. So that, 'till the Treaty of *Seville* was concluded, the Mutuality of the Contract, enter'd into by the Quadruple Alliance, was imperfectly stipulated.

The Meaning of the Stipulation was, that the Emperor and *Spain* should be mutual Gainers; yet if we consider the Imperfection of this Circumstance of the Contract, that the Garrisons of the Countries in Question should consist of Neutrals, and not of *Spaniards*, it will appear, that the Emperor becomes
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the sole Gainer by this Contract, in Virtue of the Treaty of Quadruple Alliance, being put into the actual Possession of the Advantages of the Convention, as well with Respect to the Kingdom of *Sicily*, as also to the Right of Feudality over the Dominions in Question: And yet *Don Carlos*, in Favour of whom the King of *Spain* has made these Concessions to the Emperor, is not authorized by the Treaty of Quadruple Alliance, to make Use of such Means, as wou'd best contribute to render the Advantages of the Treaty mutual.

So that the Variation or Difference between the Treaty of Quadruple Alliance, and the present Treaty, was a necessary Difference towards the Corroboration of his Imperial Majesty's Grant, which, in the Nature of Equity and Justice, will not admit of Obstruction from the Emperor. And, tho' the Treaty of *Seville* be an expresse Declaration of the Inefficacy of the Means before agreed upon towards the effectuating the Succession, it does not seem, how, in Justice and Honour, the Emperor cou'd disapprove, that *Don Carlos* shou'd pursue his Aim to succeed to the Dominions in Question, rather by the Assistance of *Spanish* than of any other Troops, tho' there were no Stipulation in this Treaty, that these Troops should be *Spaniards*, and tho' the Parties which contracted by the Treaty of *Seville*, that these Troops should consist of *Spaniards*, had not made this subsequent Treaty at *Seville*.

By the Parties which contracted, I mean the Parties which invested *Sicily* in the Emperor, and a Right of Feudality in the Emperor and Empire, which never could be gain'd by Arms: And therefore the Loss of it will never
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be risqued (as one should think) by applying to the Means which cou'd never acquire it, and by contravening the upright Intention of Princes, who, when these Rights were yielded to the Emperor, upon certain Conditions, might have obtained the Conditions even without conferring the Rights. This I may be justify'd in saying, unless I might be admitted to suppose, what is impossible, that it was never his Imperial Majesty's real Intention that the Execution of his Concession, in Favour of *Don Carlos*, should effectually take Place, unless the Emperor obtain'd further Advantages than those which he had already acknowledg'd to be an Equivalent for his Concessions.

And it will never be allow'd to be a material Objection, that a Treaty cannot be amended, but with the Consent of all the Parties engaged in the Stipulation; it will never be admitted, I say, in the present Case, where one Party is in an actual Possession, but put into this Possession chiefly, if not altogether, by the Power of those who stipulated at the same time for an Advantage in Favour of the other Party. Which, if it appears not so accessible, or attainable, by the Measures first agreed on, I cannot see, but that it is agreeable to the Tenor of a Contract, that those who have actually given the Equivalent to one Party, may vary their Measures according as Circumstances require (provided the Measures be not inconsistent with the Purpose and End of the Contract) in order to render the Benefits, stipulated for the other Party, less incompleat and inaccessible.

There appears no Reason why the Princes, who have made the Terms of the Equivalent,
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without whom, neither *Spain* nor the Emperor could be supposed to have it in their Power to effectuate the Contract, should not, as Arbitrators of the Balance of the Contract, make such an Amendment, in Favour of the Party complainant, not yet in Possession of his Equivalent, as was judg'd absolutely necessary to the Essence of the Mutuality of the Agreement; especially when there might be an Appearance of the other Party's insisting upon further (unstipulated) Conditions, for his executing the Treay, to the Prejudice of the commercial Interest of the Arbitrators themselves; being encourag'd so to do, because of the Uncertainty the stipulated Succession might lye under, if the Garrisons of the Fortresses, in Question, were to consist of Neutrals. But I shall write upon this Hint, my Lord, in a Manner more explicit, as I proceed in my Letter.

And this Amendment, which was made to the Treaty of Quadruple Alliance, by the Treaty of *Seville*, has still in it this stronger Power, or Virtue, of Right; which seems, in my Comprehension, to admit of no Contest, or Disallowance: That in Pursuance of actual Advantages, already obtain'd, and in Possession of the Emperor, the *Jus in Feudum*, which before belong'd to the Emperor and Empire, is now (*pro tempore*) invested in the Powers contracting by the Treaty of *Seville* and *Don Carlos*; for, if the Patronage has been alienated upon valuable Considerations, and the Purchase paid, the Patronage is no longer in the Possession of the Patron, that sold it, but now becomes the Right of them who paid the Purchase.

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The Emperor, in the Equity of his Proceedings, cannot be supposed first to alienate the Patronage upon valuable Considerations, and then take Measures contrary to the Stipulation; as if he were still Lord of the Patronage, and no valuable Consideration had been allow'd him: If an actual Alienation of Patronage has been made by the Emperor, then, whatever the Right of Patronage might have enabled the Emperor to have done, before the Alienation, from the Time the Concession was made by the Emperor, and that the Equivalent was granted on the Part of the other contracting Powers; the Emperor necessarily agreed to a *Supersedes* or Suspension (for the Time) of his Right of Patronage, and invested it in the other contracting Powers, for the Time, as is done in all Cases of temporary Sales.

And the Course that this Benefice will undergo in the Transition of Right from the ancient Patron, 'till the Grant of the ancient Patron takes Place, will have this Condition in the present Case; that whatever Means the Patron himself might justly take, towards the disposing of the Patronage in Reversion, against any Combinations that might be form'd, either by pretended Patrons or others; the same Right is now invested in the contracting Powers. Yet only till the stipulated Succession takes Place, for then the Patronage will never return again to the Emperor. They are to provide, and take due Precautions that the Grant obtained by them, from the Emperor for two such Equivalents should not be made liable to an Inexecution or Avoidance, for want of their

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using of the proper Means which are necessary to enforce the Stipulation; which, if they are conformable, with Regard to the Number of Troops, to the Treaty of Quadruple Alliance, the Emperor has no Reason to obstruct them in Virtue of a Right of Patronage, which, for the present Turn, is subjected to an Alienation.

And tho' it has happen'd that there are some Circumstances, contain'd in the Treaty of Quadruple Alliance, besides the Variation of the Troops, which might have been alter'd, or subjected to a new Modification; yet, if the Omission or Change of these Circumstances, in the Treaty of *Seville*, do not derogate from the Grant of Equivalent made to his Imperial Majesty, by the contracting Powers, the Emperor has no Reason to obstruct the Execution of the essential Parts of the Treaty which he is engag'd in Honour and Justice to comply with; on the Pretence of the Variation of Circumstances, which in no wise tend to diminish the Advantages which his Imperial Majesty has received by the Equivalent.

There can be no Reason to say, that there was a Necessity of the invariable Observance of the Quadruple Alliance, with respect to the *Swisse* Troops, in order to the Emperor's maintaining his *Jus in Feudum* over the Dominions in Question, unless it be meant that these *Swisse* Troops were design'd as a Garrison in perpetuity to maintain his *Jus in Feudum*.

But if it was intended that these *Swisse* Troops should be plac'd in Garrison only to secure the Succession, as the Variation of *Swisse* into *Spanish* Troops, will not enervate or in
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any respect diminish the Emperor's Right of Patronage, his *Feodalité établie sur les dits Etats* ; so neither, had it continued the Tenor of the Treaty, that *Swisse* and not *Spanish* Troops should have been employed to secure the Succession, wou'd that Circumstance have strengthened or given any Advantage to the Emperor's Right of Patronage; and therefore, whether the Troops be *Swisse* or *Spanish*, the Emperor cannot be supposed to be in a less Degree, the Lord of the Fief, if it be agreed that they should be *Spanish*, or in a greater Degree, had the Resolution continued of their being *Swisses*.

Subsequent Restrictions and negative Declarations contain'd in the Letters Expectative, are no Part of the Treaty of Quadruple Alliance; and tho' they may be conformable to the Confirmation made by the States of the Empire, they are no farther obligatory with respect to the contracting Powers, than the Nature of the Mutualities of the Contract will admit, which was made in the Treaty of Quadruple Alliance.

If the Emperor has declared in the Letters Expectative, that he is neither able nor willing to grant the Investiture on any other Terms, than that the Fortresses shou'd be garrison'd by Neutrals, and the Absoluteness of the Restriction be not expressed in the Treaty of Quadruple Alliance, to which all the Contracting Powers, as well as the Emperor were Parties : I can see no possible Reason, why the Sense of the Contracting Powers with regard to the Intention of the Article in Question, may not be admitted as Declaratory of the main End of the Treaty, as the Sense of the

Emperor, who has limited the Intention of the Treaty in the Letters Expectative, by certain restrictive Words which are not inserted in the Treaty.

The Benefits accruing to the Emperor, by both the Treaties are actually put into his own Possession : The Benefits accruing to *Don Carlos*, by the Treaties are only reversional; so that the Emperor incurs no Prejudice, nor can he possibly be supposed to incur any by the Change of the Troops from *Swisse* to *Spanish*, or any other such Circumstances; let such Circumstances vary ever so much, they can't possibly be interpreted to vary in Prejudice of the Emperor's *Jus in Feudum*, under whose Patronage it is stipulated that *Don Carlos* should hold.

The Circumstances of Variation in the Treaty of *Seville* are therefore to be construed as favourable Conditions, under which *Don Carlos* proposes more effectually, to exert the Right which has been conveyed to him by the Emperor; which being done, in Confirmation of the Emperor's Jurisdiction, and for effectuating of a Grant, which has been purchas'd, it ought not to be argu'd, that it is done in Prejudice of the Reciprocity of the Contract.

I can, indeed, see a Possibility, by looking upon these Matters in another Light, that the Emperor's Ministers may conceive an Injury done to their Master, by the so often mentioned Variation; and if my Apprehensions and Presages can be supposed to be as true, as it is out of any Man's Power to contradict them, I should think it criminal to delay the Explanation of them.

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The Imperial Ministers may possibly consider the Succession to *Tuscany*, &c. as liable to uncertainty, if the Fortresses of the Country in Question should be garrisoned by Neutrals ; and without doubt, the *Spaniards* had the same Conceptions of the Possibility of unfortunate Accidents, provided the Fortresses were not to be garrison'd by *Spaniards*. The Consequence of this Situation which might have subjected the Court of *Spain* to new Demands from the Emperor, I apprehend might have prov'd very unfavourable to *Britain*. For can it be imagin'd, that the Emperor could have an Influence over the Counsels of *Spain*, and yet not make use of it to carry on some favourite Purpose ? We have all seen the irresistible Propensions of the Imperial Court to promote a Commerce, as by way of Emulation, to the great Prejudice of the Mercantile Interest of this Nation, and Diminution of the Royal Revenue. Was not this one chief Object, which engag'd the Emperor to court the Friendship of *Spain*, and accede to the future Elevation of *Don Carlos* ? But if that be the Use which they have already made of their Alliance with *Spain* : If this may be probably their Prospect, in desiring to keep the Succession of *Don Carlos* to *Tuscany* and *Parma* in a State of uncertainty : Should they give their Dissent, or offer any Molestation to the Schemes which are entred into for the Execution of a Grant, for the Favour of which they have been already so largely compensated ; I should think, no one can question, but that we are bound to give our whole Attention to invigorate this Contract, and to ascertain as much as lies in our Power the Performance of it ;

it : In Consideration of which, the Emperor has already received the Advantages stipulated for him, and which will furnish sufficient Occasion to preclude the Imperial Court from demanding the apprehended subsequent Equivalents from *Spain*.

And since this is the State of the Case, that the Emperor has obtained, and is in Possession of his Conditions, in Consideration of his Grant made in Favour of *Don Carlos*; and as the Imperial Court may not shew any good Will at present towards the Contract of Succession; it may be supposed highly prudential in *Spain*, not only to take Precautions against the Coldness and Indifferency of the Emperor, by furnishing the Fortresses in Question with *Spanish* Troops, but likewise it, may be highly convenient for the *Spaniards*, to have an Eye to the Combinations which may be made by the *Italian* Princes, under Pretence of asserting the Right of another Patron, and to secure themselves by their own Troops against the Possibility of any such sinister Event. By another Patron, I mean the Pope of *Rome*, whose Claim of Patronage over these Fiefs, by the Declaration made in the Treaty of Quadruple Alliance, in Favour of the Emperor and Empire, has been absolutely frustrated, as far as the supposed Equity of so many Potent Princes concurring to the Declaration, can be admitted to operate towards an Avoidance. But yet there is Room to expect, that this Investiture of *Don Carlos* might possibly be contraven'd and oppugned by this pretended Patron, and that no Endeavour will be omitted to vindicate the Claim by the History of past Times, and the *Bulls* and *Diploma's* of the *Vatican*.
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The *Spaniards* may be told that Pope *Leo X.* about the Year 1527, drove the *French* out of *Parma* and *Placentia*, asserting his Right to these Fiefs. After this, *Julius III.* made War on *Ottavio Farnese*, on whom he had bestowed the Dutchy of *Parma*, for having received a *French* Garrison into that Dutchy without his Consent.— And the Sovereignty of the Dutchy of *Tuscany* has always been treated in the *Vatican* as subject to the same Condition. It is several Years since the Reformation that *Maximilian* the II. withstood a Grant intended to be made by the Pope, by which the Dutchy of *Tuscany* was to have been erected into a Kingdom, in Virtue of its feudal Dependance on the Successor of St. *Peter* as Lord or Patron. It was *Pius* the Vth. that first conferred the Title of Grand Duke on the Prince of this Country.

And this Notion of the Pope's being the Patron of the Fiefs in Question, has never, as it appears, been generally discouraged by the Feudatories themselves, who have found it their Interest to have recourse to it (when either they suffered Oppression from their lawful Lord, or became elated with Power, and impatient of due Subjection,) according to the Practices and Methods in use of all Feudatory Beneficiaries, when two Sovereign Lords have contended for the Right of Patronage.

It is not then unsuitable to the Wisdom of the Contracting Powers, who have already abolished the Papal Pretensions by solemn Declarations, to consent to expedients which vindicate the Equity of their Opinions, and give the most powerful Efficacy to their Schemes of obtaining an universal Peace.

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Moreover, it ought to be look'd upon as an insignificant Reason, for the Introduction of *Spanish* Troops into these Fortresses, that there may be some doubt, whether the People themselves may not erect a Claim of Right to elect a Prince or Princes, or to establish Republicks within some of the great Cities, which with their Appendances constitute the Dutchies in Question.

It is well known, with regard to the three great Cities of which the Dutchy of *Tuscany* consists, *Florence*, *Sienna* and *Pisa*, which were formerly Republicks, that they do to this Day maintain, that tho' once indeed the Emperor had been their Lord and Patron; yet they purchased their Exemption from depending on the Emperor, each of them for a large Sum of Money: The *Florentines* for 6000 Florins: The Citizens of *Sienna* for 20000, and the *Pisans* for 12000.

Now it is highly probable, that a People retaining a Remembrance of such Pretensions, and being able to authenticate their Claim by sufficient Registries in Case of due support from the neighbouring Princes, might not be unwilling to enter into a Confederacy for the Exertion of natural Rights, corroborated by the above-mentioned Purchase of Independance.

This gives me an Occasion, my Lord, to declare, that if these People have, exprest such Joy, as is said by Authority they have, on the News of the Conclusion of the Treaty of *Seville*; and if they appear to be universally in a Disposition to agree to this Establishment, I should look upon this Election of *Don Carlos*, made by the Voice of the People, to be of equal Right,
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or of a right Superior to the Conveyance of any Imperial Charter.

But what was the Ground of the Joy of this People on the Publication of the Treaty of *Seville*; it was not only conceived, because *Don Carlos* was appointed Successor to their Sovereigns now reigning, but because the Designation of *Don Carlos* to be Successor to those Dominions, was to be supported by 6000 *Spanish* Troops; had not this been the Ground of their Joy, they had no Occasion to express their Satisfaction now on *Don Carlos's* being appointed Successor by the Treaty of *Seville*, since that had been already done several Years ago, by Virtue of the Treaty of Quadruple Alliance.

But to return, my Lord, to my Argument. I was attempting to convince your Lordship of the Legality of *Don Carlos's* introducing *Spanish* Troops into the Fortresses of the Sovereignties in Question, for the Security of his Succession; and I am obliged to say, that the more I reflect upon this Point, I am so much the more confirmed in my Opinion relating to the Necessity of the Expedient.

For let us suppose an Event to happen, which in the Nature of Things is not impossible, tho' far from being wished for, that two Vacancies might happen at once, *That* of the Imperial Throne, and *That* of the Dutchy of *Tuscany*: I apprehend in that Case, the Pope wou'd issue out a Supersedeas of the expectative Investiture, which is now granted to *Don Carlos*; or if no formal Supersedeas ensued, such an Event wou'd give great Grounds for the Expectation of a Renewal of the ancient Pretensions of the Pope over the *Italian* Fiefs,

tho' we should suppose that they were acknowledged, by the Pope, to belong to the Emperor and Empire. Namely, that during the Vacancy of the Empire, the Pope has a Prerogative to fill up the Vacancies of the Imperial Fiefs in Virtue of the Supremacy of the Holy Chair. It was in Pursuance of this Papal Claim, that *John* and *Luchin* were invested by the Pope, in the Sovereignty of *Milan* in the Year 1341 ; and tho' it may be said, that the Energy of this Claim is obstructed by the expectative Investiture already granted, yet does it not appear that 6000 Popish *Swisses*, not under the Command of one particular Sovereign, would have been a sufficient Support to the Title of *Don Carlos*, during the Vacancy of the Empire against the superstitious Obligations which these Neutrals might have look'd upon themselves to lye under, to maintain the Right of the Pope.

So that if this Grant made by the Emperor in favour of *Don Carlos*, is not unattended with various Possibilities, of its being frustrated, of great Contests and Delays and Negotiations; Difficulties which generally obstruct the Accession of a Successor in a new Line : The Foresight of the *Remora's* enumerated, might well be suppos'd to excite and justify the Vigilance of the *Spaniards*, and engage them to enter into Measures to prevent their losing an Acquisition which they had already paid for.

There seem'd no Means more effectual for this End, than the Introduction of *Spanish* Troops into the Fortresses of the Countries in Question ; and considering the Chances before enumerated, whereby the Succession might possibly be frustrated in Case the Variation
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excepted against, had not been made ; it does not seem to me how in Justice and Equity, any of the Contracting Powers could refuse their Assent to this Condition, whilst at the same Time they appear'd to be willing that the Succession shou'd take Place.

The Point, my Lord, which most affects a compassionate Mind, and Compassion is the noblest Quality in the Complexion of Man, if duly regulated by Reason, seems to be that Condition in the Treaty, whereby the Sovereign Command of the Power Military, is said to be taken from the reigning Prince or Princes of the Dutchies in Question ; and that Part of their Sovereignty, if the *Spanish* Troops gain Admissi^{on}, being wholly rent from them (as it is said) it cannot be deny'd but that the Grand Duke of *Tuscany* in particular, will by the Execution of this Treaty appear to be made liable to an injurious Controulment in that Branch of Sovereignty, which generally is so great a Support of a Prince's Authority.

This is what is objected in general Terms ; and yet, if we proceed to close reasoning upon the Matter in Question, I make no doubt but it will seem, that the real Constraint (if it may be called a Constraint) which is put upon that Prince by the Introduction of Foreign Troops, will scarce admit of being called an Hardship, when consider'd in Comparison with the great Exaggerations which have been offered to give this Circumstance the Appearance of it : And for ought I know it will appear in the End, that his Highness is not subjected at all to any Kind of Controulment in the real Exercise of his Sovereignty, but only to the bare Incapacity of obstructing the Right of

Don Carlos, to succeed upon his Highness's Demise to the Sovereignty of these two Fortresses, *Porto-Feraio*, and *Leghorn*.

The Dutchies of *Tuscany* and *Parma* may be said as it were to be the Garden of *Italy*; *Tuscany* is called by the Inhabitants, the *Yolk* of an *Egg*, the three Dutchies in Question abound with Inhabitants and several great Cities: Now I shou'd hope that your Lordship wou'd not disagree with me, if I shou'd declare upon the present View of the Number of Cities and Inhabitants of the three Dutchies, that 6000 Men to be divided into four separate Garrisons, remote from each other, cannot possibly have it in their Power to lay any great Constraint upon so considerable a Prince, whose Exchequer, as I apprehend, is to be eas'd of the Burthen of maintaining the Garrisons of *Leghorn* and *Porto-Feraio*, and consequently the Prince is enabled in Virtue of this Stipulation, to maintain a much greater Number of Troops, for the Defence of his Person, and for preventing Insults from these Garrisons or any other Troops, than was judg'd necessary to be maintain'd according to his former Military Establishments.

A Garrison of 4000 Men in *Leghorn* and *Porto-Feraio*, can never be supposed to be so significant as to constrain the Person of the Grand Duke of *Tuscany*, and usurp his Property, except on that Spot of Ground within these two Towns, where the Garrisons are fixed.

It may be in some Degree affirm'd with equal Truth, that the Garrisons of *Gibraltar* and *Minorca* constrain the King of *Spain*, and endanger his Person as well as Influence him in the Exercise of his Sovereignty.

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If any one that doubts of it will look into a Map, he will find this Argument of Comparison verify'd from the Situation of the Places.

Gibraltar is a Sea-Port Town in the Southern Parts of *Andalusia* : The King of *Spain*, who holds his Court at *Seville*, is not constrain'd by the Garrison of *Gibraltar*.

Leghorn is a Sea-Port Town, lying in the Southern Parts of *Tuscany* : The Duke of *Tuscany* will have as little Reason to be apprehensive of the Power and Usurpation of the Garrison of *Leghorn*.

Portmahon is a Fortress in an Island in the Mediterranean Sea, at some Distance from *Spain* : The *Catalans* and *Valentians* apprehend no Danger from the Garrison of *Portmahon*.

Porto-Feraio is likewise an Island in the Mediterranean Sea, but the Garrison of *Porto-Feraio* can no more be supposed to disturb the Sovereignty of the Grand Duke in *Tuscany*, than the Garrison of *Portmahon* can be imagin'd to molest the Sovereignty of the King of *Spain*, in *Valentia* and *Catalonia*.

So that upon Enquiry into this Matter it begins to appear, that the Duke of *Tuscany* has no such Reason to except against the Change of the Garrisons in these two Places, the one situated at a considerable Distance from *Florence* in the South of *Tuscany*, the other in the Island of *Elba* in the Mediterranean Sea, as if the Sacredness of his Person and Property were submitted to Violation, by the Disposition of the Treaty. His Person is not affected, because it is not intended, that these Troops should be near his Person ; on the Contrary, they are confin'd to their Post in Fortresses at a Distance :
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His Property is not affected, save in this only Condition, that he is exonerated from the Expence of maintaining the Garrison in question, for the Sake of the effectual Execution of the Treaty, which the Terms of the Investiture oblige him to promote, tho' the Garrison continued to consist of his own Subjects; but as to what relates to these objected Violations, I shall argue upon them more directly in the Sequel of my Letter.

I say, that his Highness has no such Cause to except against the Change of the Garrisons, if the abovementioned Reason of Parity be admitted between the Circumstances of *Spain* and *Tuscany*, and no Man can alledge that the Circumstances are not similar and correspondent in Proportion.

But as it must be confess'd, that all Circumstances in the present Case do not coincide in a Parity with the Example produc'd, I here take Occasion to say, that my only Intention in making this Comparison, was to shew that the Prince is not endanger'd with respect to his Life and Property, tho' two remote Fortresses shou'd be *absolutely* alienated from his Sovereignty, and much less if the Prince is enabled to Augment the Number of his Forces, by the Diminution of his Expences in the Maintenance of those Garrisons; and there is no Intention (as it wou'd seem) to diminish the Revenue accruing to the Prince, even from the Cities to which these Fortresses belong.

The Terms of the Investiture of the Family of the *Medicis* are near expiring: There is no Heir Male to succeed him of his own House: The Surrender of the Castles of these two
Places,

Places, *Porto-Feraio* and *Leghorn* is desired of him, in order to have them garrison'd with *Spanish* Troops, not with any View to disparage or diminish the Power of the Grand Duke within his own Dominions.

The Stipulation was made with a View, not only to secure the Succession, but to maintain the Tranquillity of the Reign of the present Prince, for his safer Conveyance of his Dominions to his next lawful Successor.

The use of the Key that has been given to the *Spaniards* of the Dutchy of *Tuscany*, is to shut the Door against Pretenders (and that only) and not designedly to prejudice the Sovereignty of the reigning Prince, which tho' it might accidentally suffer in the Point of Disability, which is laid on the Prince, to obstruct the Operation of the Treaty, which in the Nature of his Tenure he is obliged to submit to; yet is the Prejudice confin'd within the Walls of the Castles of these two Towns: And the Limitations of the Exercise of the Sovereignty of the Prince over these two Garrisons (as far as his Sovereignty may be said to be limited, when even these two Garrisons are obliged by the Treaty, to take an Oath to maintain his Sovereignty) is not in any wise intended to disavour the present reigning Prince; nor can it be construed to have that Intention, except as I have intimated already, the Disability of disappointing a lawful Successor, be adjudg'd an unlawful Limitation of Power, or the fixing a Disability of defeating a private Entail, which is justify'd by the Civil Law, may not be allowable by the Law of Nations, with respect to the Succession to Sovereignities.

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If the present Garrisons of these Places, had been equally proper for securing the Succession to *Don Carlos*, the present Garrisons still wou'd have remain'd in Possession of the Fortresses; so that the sole Reason why they are transmuted into *Spaniards*, is not to diminish the Sovereignty of Duke *Gaston*, but to secure the Succession of *Don Carlos*.

I mention these Circumstances, and make these Distinctions to your Lordship, in order to answer the Suggestions of Harshness which have been offered against the present Dispensation of the Treaty of *Seville*. But this, my Lord, is not all I have to say upon the present Question, there are other Mitigations which are applicable to the Charge of Harshness, which is offered against the Treaty of *Seville* with regard to the *Spanish* Troops, which are to be introduc'd as a Garrison into *Leghorn*; (as to *Porto-Feraio*, I see no Reason why I may not omit the Mention of it, it being so insignificant to the Safety of the Grand Duke of *Tuscany*, whether these or any other friendly Troops shou'd be establish'd as a Garrison at *Porto-Feraio*;) I say there are other Mitigations, and these arise from the Quality or Condition of the Sovereignty, that a Feudatory Prince receives in Consequence of his Investiture.

Altho', according to the Tenure of these Fiefs, the Feudatory Prince be not bound to pay Tribute, or to base Charges, altho' he has a *Jus Imperij* invested in him, which to all Intents and Purposes, with respect to the Exercise of it is an entire Sovereignty; yet as he may forfeit it for certain Crimes, as he acknowledges a Lord and Patron, not only as

a Lord and Patron, not only as the Original of his Power, but as the Lord upon whom still he depends by the *nexus Feudalis*, and is liable to be cited on a Charge of Crimes, to appear before the Imperial Chamber or Imperial Council, as was the Case of the *Genoefes*, who in the Year 1559 were summon'd, and at last compelled by *Menaces* of Proscription, to appear before the Emperor *Maximilian* the II^d. on a Question relating to their Demefnes: Namely, whether the Marquis of *Final* held his Fief from that State, or immediately from the Emperor, it may not seem improper or repugnant to the Dignity of Feudatory Princes, if the Lord or Patron in whom the *Jus Feudi* is inherent, shou'd take proper Means to verify and defend his Claim of Patronage, upon the approach of the certain Extinction of the Family to whom the Fief is granted; for if it be a Benefice, (*Feudum est beneficium* says *Baldus*,) granted to a particular Family by the Favour and Concession of the Patron; there lyes in the Nature of Things an Obligation on the Client, not to insist upon Delicacies, only of an imaginary Significancy, when the Prerogative of the Patron is affected by the Punto, but even to suffer such Diminution of his Sovereignty, as is absolutely necessary to support the Power of disposing it in Reversion in *him*, by whom the Sovereignty was conferred; and more especially when all due Care has been taken to declare, in order to save the Honour and Punto of the Feudatory, that it was not in Subtraction of any Part of the original Grant of Sovereignty that it was stipulated, that these two Fortresses should be garrison'd by Troops not in the Pay of the Feudatory Prince; for

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which Infringement (in appearance) of the Sovereignty of the Prince, there was this Alleviation or Recompence allowed, that the Prince was not only to retain the Sovereign Jurisdiction with all Gabells and Taxes (as it wou'd seem) arising from it in those two Towns, but likewise that he shou'd be exempted from the Charge of Maintenance of the Garrisons of them.

Now having made this Declaration, as to the Power and Jurisdiction of the Patron: I think it proper to intimate to your Lordship, (as I have already done in another Part of my Letter,) that whatever I have prov'd to be the Right of the Emperor upon the present Emergency, with respect to his Fendatory, Will, in Virtue of the Contract, by which the Emperor upon valuable Considerations, alienated the Benefices in Succession to *Don Carlos*, Will, as it has been already prov'd, be applicable in every Point of Power and Jurisdiction to the Contracting Powers, and particularly to Spain and *Don Carlos*, till the Succession of *Don Carlos* takes Place.

Now the Circumstances, being such as they are, with respect to the Introduction of these foreign Troops, it wou'd seem as if it were time enough to complain of the Treaty, if it shou'd hereafter happen, that the *Spanish* Garrison of *Leghorn* shou'd commit Devastations in the open Country, or raise Contributions, or subject the Country to any such other Military Exactions; but these are Consequences which can scarce possibly ensue, the Proportion of the 6000 *Spaniards*, which may be supposed to be assigned for the Garrison of *Leghorn*, can never be able to spare a Detach-
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ment out of the Walls of the City of sufficient Force, to commit any such Insolences in that populous Country.

The Demand of the *Spaniards*, with regard to the Number of the Troops, seems to comprehend no other Intention, than that the respective Garrisons shou'd keep to their Post, to be able to secure these Fortresses for the Use of the Successor, on the Demise of the reigning Prince.

Besides, the Duke of *Tuscany* in the Quality of a Feudatary Prince, is much more passive, under *Affronts* of this kind, than we, who are a free and independent Nation, under an Imperial Crown, may be apt to imagine. It is easy to be prov'd, from very Modern History, that the Emperor of *Germany*, whenever he has sent an Army into the Neighbourhood of *Tuscany*, has not made the least Scruple to commission them to visit the *Tuscan* Territories, in Quality of the Troops of their supreme Lord; and that these Troops have accordingly demanded Sums of Money of the Grand Duke of *Tuscany*, as a Contribution for their Subsistence, tho' the Intention of their being sent into *Italy* was, to maintain a Controversy against other Princes.

It is very well known, that, in the Year 1712 there came an Imperial Army into *Tuscany*, consisting (as it was said) of 12000 Men, commanded by a General of the House of *Starenberg*, and that they lived at Discretion, in the open Country, in the Neighbourhood of *Leghorn*; commanding Forage and all other Necessaries, for their Subsistence; and that they cou'd not be induc'd to leave the Country, 'till the then Grand Duke *Cosmo* had sent the full and

entire Sum which they demanded of him, as by way of Contribution. And it does seem, from the frequent Visits of this kind, which were made to the Duke of *Tuscany*, by the Imperial Troops, whenever they came, tho' chiefly upon other Purposes, into the Neighbourhood of the Territories of this Prince, that the Emperor of *Germany* did look upon, or treat the Duke of *Tuscany*, not only as a Feudatory, but as a Prince that held of him after the Tenure of the *Ligium Feudum*, as a Prince that was under an Engagement, in Virtue of his Tenure, to assist him against all his Adversaries, if not with his Forces, at least with Contribution; whether the Emperor made War in those Parts upon the *French*, or the Pope of *Rome*, or the *Genoefes*, the Occasion was sufficient to entitle the Emperor to make a Demand of Money, whenever the Emperor having a Contest in *Italy*, judg'd that it wou'd answer the Expence to Command a March of his Army towards the Territories of *Tuscany*.

I thought it proper to make mention of these Facts to your Lordship, in order to establish the Distinction between the Sovereignty of a Feudatory Prince, and the Sovereignty or supreme Jurisdiction of a Prince in Chief.

I shall take the Liberty before I conclude, to desire your Patience in the Recital of one Fact more, which seems parallel to the Point under Discussion, and furnishes a Proof, that the Resolution that has been taken to introduce foreign (*non neutral*) Troops into the Fortresses of an *Italian* Feudatory, upon the Certainty of the Extinction of the Family, does not seem new and unprecedented in *Italy*. The last Duke of *Urbino*, on the
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Death of his Son, obliged the Magistrates, by an Oath, to consign the Dutchy, after his Death, into the Possession of Pope *Urban VIII.* who was elected Pope in the Year 1623. Nay farther, he admitted a Prelate, of the *Vatican*, to be Governour of the Dutchy, as an Act of the faithful Surrender of the Succession. And this Prelate took actual Possession of the Dutchy, from that Time to the Death of the Duke, and the Duke neither esteem'd, nor felt himself in any wise abridg'd in the Exercise of his Sovereignty, no more than if the Succession had been in this Manner secur'd, in Favour of his Son; and it is very well known that the Duke of *Urbino* was look'd upon as a Prince in no Point inferior in Dignity to any of the *Italian* Feudatory Sovereigns.

Aliud est Res, aliud rem habendi Modus: Sovereignty is one Thing, but the Manner of obtaining and holding it is another: If the Sovereignty be held of a Patron as a Benefice, and the Beneficiary is subject to a Forfeiture to the Patron for Rebellion and Oppression, and such other Crimes, we ought not to measure the Respect, which may be legally claim'd by a dependent Lord, or if violated, may be reasonably complain'd of, by the Sacredness of the Character, and the inviolable Reverence in all Points, (quite throughout,) which ought to be ascrib'd, and is due in the Course of Mutuality, to an independent Sovereign from all other Sovereigns, but of equal Order and Majesty, tho' Superior to him in Strength and Extent of Dominions.

Thus, my Lord, have I explain'd to your Lordship my Opinion upon that Point of the Treaty of *Seville*, which relates to *Don Carlos*;
upon

upon Occasion of which, your Lordship will give me leave to re-capitulate the Substance of what I have writ in as few Words as possible, and then to conclude. I have prov'd, I think, that the Mutuality of the Contract, between the Emperor and *Spain*, in Regard to *Don Carlos*, made by the Treaty of Quadruple Alliance, has not been infring'd by the Treaty of *Seville*; and that no Injury has been done to the Emperor, by the Variation of the Treaty of *Seville*, as to this Point, from that of the Quadruple Alliance, because the particular Terms of the Point in Question of the Treaty of *Seville*, are not meant, nor can they be construed to derogate from any Right which has been granted to the Emperor, in Consideration of his Concession in Favour of *Don Carlos*; and because the Emperor has already received, and is in Possession of his Equivalent, both in respect of the Kingdom of *Sicily*, and also in respect of the *Fus in Feudum*, which has been acknowledged in full and ample Manner to belong to him, over the Dominions in Question; and because the Arbitrators were obliged in Justice, to effectuate the Mutuality of the Contract by the Variation. I have likewise, I think, made out the Necessity that *Spain* lies under, to vary the Troops from *Swisses* to *Spanish*, with the Legality of the Variation, in order to the due Execution of the Mutuality of the Contract, in Favour of *Don Carlos*, against whom, (tho' the Emperor should act in the Matter, with the utmost Sincerity of Intention) yet other (*Italian Powers*) might combine, to defeat his Succession, under Pretence of asserting the pretended Rights of the

the Pope, who in the Vacancy of the Empire, has a Claim to the Patronage of these Territories, distinct from that which is provided against, by the Treaty of Quadruple Alliance. I have likewise, I think, answer'd the Delicacies and Scruples which have been suggested against the Legality of introducing foreign Troops into *Leghorn* and *Porto Feraio*. I have likewise explained to your Lordship, my Notion touching the Respect which is due to a beneficiary Prince, in a Point where a Succession to the Benefice requires the utmost Attention and Vigilance of the Successor, in Behalf of whom the Right of Patronage has been purchas'd, for a valuable Consideration.

Were I inclin'd to write any more, I should think my self obliged to give over, for the Sake of your Lordship, whom, I am sensible, I have sufficiently troubled already, by making my Letter so long, who am,

My Lord, &c.

F I N I S.

1952, 1953, 1954

